IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6790 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMMAD NAVAB MOMMAD RASID KURESHI

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE BHATT for MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 23rd July 1999 passed by the Police Commissioner, Ahmedabad City, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner was

committed to the Jail at Bhuj by the committal order dated 23rd July 1999, but it is given out that during the pendency of this petition, the petitioner has been transferred to the District Jail at Jamnagar and he is detained there.

2. The grounds enclosed with the detention order show that two criminal cases, i.e. 243/99 dated 1.6.1999 and 247/99 dated 4th June 1999 were registered against the petitioner at Amraiwadi Police Station for the offences under Chapter 16 and 17 of the IPC and at the time when the detention order was passed, the investigation was going on in both the cases. The detaining authority has taken into consideration the allegations against the petitioner in the aforesaid criminal cases and has also mentioned the statements made by witnesses with regard to the incidents dated 25th June 1999 and 8th July 1999 and claimed the privilege under Sec.9(2) of the Act against disclosure about the witnesses. The detaining authority has found that the petitioner was engaged in anti social activities, was active with his associates in criminal and anti social activities. The petitioner has been found to a dangerous person and that it was not possible to deter the petitioner from continuing the anti social activities unless he was detained under PASA.

3. The detention has been challenged on grounds more than one. However, it is not necessary for me to deal with all the grounds because this petition deserves to be allowed only on the ground that it is a case of wrong exercise of power under Sec.9(2) of the Act and the detaining authority had no sufficient time whatsoever to apply its mind on the materials placed before it so as to come to the conclusion that it was a case for invoking the privilege under Sec.9(2) of the Act and that it was a case for detention. It has been pointed out by learned Asstt. Govt. Pleader while answering the aforesaid ground that in fact the proposal in this case was made on 23rd July 1999, the verification of the statements was made on the same day, i.e. 23rd July 1999 and the detention order was also passed on the same day, i.e. 23rd July 1999. Such being the admitted position with regard to the facts of making the proposal, verification of the statements and passing of the detention order on the same day, i.e. 23rd July 1999, this case is found to be squarely covered by a decision of this Court against the respondents and in favour of the petitioner. In the case of Kalidas v. State reported in 1993 (2) GLR 1659, the Division Bench of this Court has considered the case in which the proposal was made on 16th October 1992 and

the detention order was passed on the next day, i.e. 17th October 1992 and the Division Bench in no uncertain terms held that it was a wrong exercise of privilege under Sec.9(2) of the Act, because the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal on 16th October 1992 and that had been promptly accepted by the detaining authority and the detention order was passed on the next day and thus the right of the petitioner in making the representation enshrined under Article 22(5) of the Constitution of India was adversely affected and the exercise of power under Sec.9(2) was wrong. In the case at hand, the situation is still worse as the proposal was made, the verification was made and the detention order was passed on the same day.

For the reasons recorded in the judgment, the impugned detention order dated 23rd July 1999 passed by the Police Commissioner, Ahmedabad City, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner-detenu Mohmmad Navab Mommad Rasid Kureshi, lodged in Jamnagar Jail, as a PASA detenu shall be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed and the Rule is made absolute.

(M.R. Calla, J.)

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